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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ANNETTE CODY,

Plaintiff,

v.

LACOSTE USA, INC. et al.,

Defendants.

Case No. 8:23-cv-00235-SSS-KKx

**ORDER DENYING WITHOUT
PREJUDICE DEFENDANT'S
MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT [Dkt. 17] AND
ORDERING PLAINTIFF TO
SHOW CAUSE.**

1 The Court is in receipt of Defendant Lacoste USA, Inc.’s motion to
 2 dismiss Plaintiff Annette Cody’s first amended complaint [Dkt. 13 (“FAC”)].
 3 The motion is fully briefed [Dkt. 17 (Mot.); Dkt. 19 (Opp.); Dkt. 21 (Reply)]
 4 and was taken under submission without a hearing.

5 Upon further review of the operative complaint, the Court finds Plaintiff’s
 6 allegations as to the amount in controversy insufficient to establish subject
 7 matter jurisdiction under the Class Action Fairness Act of 2005. The Court
 8 therefore **ORDERS** Plaintiff to show cause, on or before **September 15, 2023**
 9 as set forth below. In light of this order, Defendant’s motion to dismiss is
 10 **DENIED WITHOUT PREJUDICE**. [Dkt. 17]. The parties are **DIRECTED**
 11 to review Part IV, below, for further instructions.

12 I. BACKGROUND

13 A. Plaintiff’s Causes of Action

14 Plaintiff’s complaint asserts two causes of action under Sections 631(a)
 15 and 632.7 of the California Invasion of Privacy Act (“CIPA”). These claims
 16 arise from Defendant’s purported “interception” and “recording” of a
 17 conversation Plaintiff conducted through the customer chat function on
 18 Defendant’s website. Plaintiff seeks statutory damages on behalf of herself and
 19 a putative class comprised of:

20 All persons within the state of California who within the statute
 21 of limitations period: (1) communicated with Defendant via the
 22 chat feature on Defendant’s Website; and (2) whose
 23 communications were recorded and/or eavesdropped upon
 24 without prior consent. [FAC at ¶ 25].

25 B. Statutory Damages Under CIPA

26 Section 632.7(a) provides that “any person who has been injured by a
 27 violation of this chapter” may “bring an action against the person who
 28 committed the violation for the greater of” either “[f]ive thousand dollars

1 (\$5,000) per violation” or “[t]hree times the amount of actual damages, if any,
2 sustained by the plaintiff.”

3 II. LEGAL STANDARD

4 Federal courts have limited jurisdiction, “possessing only that power
5 authorized by Constitution and statute.” *Gunn v. Minton*, 568 U.S. 251, 256, 133
6 S.Ct. 1059, 185 L.Ed.2d 72 (2013). “The objection that a federal court lacks
7 subject-matter jurisdiction ... may be raised by a party, or by a court on its own
8 initiative, at any stage in the litigation[.]” *Arbaugh v. Y&H Corp.*, 546 U.S. 500,
9 506, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006). “It is to be presumed that a
10 cause lies outside [of a federal court's] limited jurisdiction, and the burden of
11 establishing the contrary rests upon the party asserting jurisdiction.” *Kokkonen*
12 *v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted).
13 Thus, although Defendant does not discuss subject matter jurisdiction in its
14 motion to dismiss, the Court now raises the issue sua sponte.

15 Plaintiff alleges subject matter jurisdiction under the Class Action
16 Fairness Act of 2005 (CAFA). [SAC at ¶ 1]. CAFA provides federal district
17 courts with original jurisdiction over class actions in which (1) the class
18 members number at least 100; (2) at least one plaintiff is diverse in citizenship
19 from any defendant, and (3) the aggregate amount in controversy exceeds \$5
20 million exclusive of interests and costs. *Ibarra v. Manheim Investments, Inc.*,
21 775 F.3d 1193, 1195 (9th Cir. 2015).

22 III. DISCUSSION

23 Here, Plaintiff contends that subject matter jurisdiction is proper under
24 CAFA because “there are 100 or more Class members,” “there is an aggregate
25 amount in controversy exceeding \$5,000,000, exclusive of interest and costs,”
26 and “there is at least minimal diversity because at least one Plaintiff and
27 Defendant are citizens of different states.” [SAC at ¶ 1].

28 As to amount in controversy, Plaintiff asserts:

1 If only 1,000 California consumers interreacted with the chat
2 feature on Defendant's Website a single time during the Class
3 period, statutory damages exceed \$5,000,000. Upon information
4 and belief, many times that number of consumers have interacted
5 with Defendant's chat feature during the Class period. [*Id.*].

6 Because Plaintiff relies entirely on statutory damages to satisfy
7 the amount-in-controversy requirement, her ability to establish subject
8 matter jurisdiction depends on the sufficiency of her allegations as to
9 the size of the putative class.

10 Here, Plaintiff's superficial description of Defendant's business,
11 website, and chat feature [*see* FAC at ¶¶ 5, 6] are insufficient to render
12 plausible her claim that at least 1,000 California consumers visited
13 Defendant's website within the statutory period – let alone that they
14 suffered the purported CIPA violations Plaintiff describes. *See Byars*
15 *v. Hot Topic, Inc.*, No. 22-1652, 2023 WL 2026994 at *5, 6 (C.D. Cal.
16 Feb. 14, 2023). Absent concrete and particularized allegations as to the
17 quantity and nature of Defendant's online interactions through its chat
18 function with California consumers, the Court cannot conclude that it
19 has subject matter jurisdiction over this action.

20 IV. CONCLUSION

21 As such, the Court **ORDERS** Plaintiff to show cause as to why
22 her complaint should not be dismissed for failure to adequately plead
23 the requisite amount in controversy under CAFA. Plaintiff is
24 **DIRECTED** to file her written response on or before **September 15,**
25 **2023**. Defendant may file a memorandum in opposition to Plaintiff's
26 filing on or before **September 22, 2023**. No reply brief will be
27 accepted.
28

1 The Court further **SETS** a hearing regarding the order to show
2 cause for **September 29, 2023 at 1 P.M. via Zoom.**

3 Defendant's motion to dismiss is **DENIED WITHOUT**
4 **PREJUDICE.** [Dkt. 17]. Should the Court conclude that Plaintiff's
5 response supports its exercise of jurisdiction over this matter, it will
6 issue a further order setting the deadline by which Defendant may file
7 a renewed responsive pleading.

8 **IT IS SO ORDERED.**

9
10 Dated: August 31, 2023



SUNSHINE S. SYKES
United States District Judge